

SEP 16 2005

**LAW OFFICES OF JOHN CHUPA  
&  
ASSOCIATES, P.C.**

Law Offices of John Chupa & Associates, P.C.  
28535 Orchard Lake Road  
Suite 60  
Farmington Hills, MI 48334  
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Attorneys  
JOHN G. CHUPA

Office Administrator  
ALINA TOLKACHIER  
FATIMA HASSAN

# Fax

<b>To:</b>	Petitions	<b>From:</b>	John G. Chupa, Esq.
<b>Fax:</b>	671-273-8300	<b>Date:</b>	Sep 16 <sup>th</sup> , 2005
<b>Phone:</b>		<b>Pages:</b>	49 including cover sheet.
<b>Re:</b>	Serial No. 09/782,353	<b>CC:</b>	

☐ Urgent    ☐ For Review    ☐ Please Comment    ☐ Please Reply    ☐ Please Call

**CONFIDENTIALITY NOTICE:**

Unless otherwise indicated or obvious from the transmittal, the information contained in this facsimile message is attorney privileged and confidential information intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication and are not sure whether it is privileged, please immediately notify us by telephone and return the original message to us at the address above via the U.S. Postal Service.

SEP 16 2005

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Martin Daniels

Examiner: Ashley Boyer Dolinger

Serial Number: 09/782,353

Group Art Unit: 3724

Filed: 02/12/2001

Attorney Docket No. 207-001

For: "Cutter"

Box No Fee  
Commissioner for Patents  
P.O. BOX 1450  
Alexandria, VA 22313-1450

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT****UNDER 37 C.F.R. §1.181(a)**

Dear Sir/Madam:

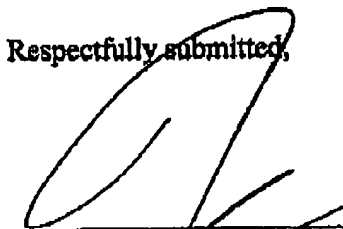
It is respectfully petitioned that the requirement of 37 C.F.R. 1.53(b) sets forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date stamped on postcard receipt. Particularly, in the above-mentioned patent application, a reply to the Office Action dated 11/27/2002 was received by the USPTO according to the received postcard receipt showing the date stamp of 09/03/2004 with a Petition to Revive the Application. The Petition to Revive was Granted, on 09/17/2004. Furthermore, a reply to a notice of non-compliant amendment dated 01/10/2005 was received by the USPTO according to received postcard receipt showing the date stamp of 01/28/2005.

A copy of each of these postcard receipts is attached. Additionally, a response to the notice of non compliant amendment is also enclosed with this petition.

Because of the foregoing reasons, the holding of abandonment should be withdrawn pursuant to 37 C.F.R. 1.181(a).

If the Examiner has any further questions regarding this matter she is invited to contact Applicant's undersigned Attorney at (248) 324-7787.

Respectfully submitted,



John G. Chupa (Reg. No. 33,483)  
Law Offices of John Chupa & Associates, P.C.  
28535 Orchard Lake Rd., Suite 50  
Farmington Hills, MI 48334  
*Attorney for Applicant*

**CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8**

I, Alina Tolkachier hereby certify that the foregoing Petition to Withdraw Holding of Abandonment is being deposited with the United States Postal Service in an envelope as First Class Mail addressed to the Commissioner for Patents and Trademarks, P.O. BOX 1450, Alexandria, VA 22313-1450 on this 16th day of September, 2005.

By: 

Alina Tolkachier

For:

The Law Offices of John Chupa & Associates, P.C.  
28535 Orchard Lake Rd., Suite 50  
Farmington Hills, MI 48334

SEP 16 2005

COPY



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
ADMINISTRATIVE COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,353	02/12/2001	Martin Daniels	207-001	7800

7590 09/02/2005

John G. Chupa  
Law Offices of John G. Chupa & Associates, P.C.  
28535 Orchard Lake Road  
Ste. 50  
Farmington Hills, MI 48334

EXAMINER

ASHLEY, BOYER DOLINGER

ART UNIT PAPER NUMBER

3724

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notice of Abandonment**

Application No.

09/782,353

Applicant(s)

DANIELS, MARTIN

Examiner

Boyer D. Ashley

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 10 January 2005.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(e)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

*Boyer D. Ashley*  
Boyer D. Ashley  
Primary Examiner  
Art Unit: 3724

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

U.S. Patent and Trademark Office

Notice of Abandonment

Part of Paper No. 20050812

BEST AVAILABLE COPY

The received stamp of the United States Patent and Trademark Office  
imprinted hereon acknowledges the filing of:

**RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT**

Applicant(s): Martin Daniels  
Title: Cutter  
Serial No.: 09/782,353  
Attorney Docket No.: 207-001

Response to Notice: 9 pages  
Certificate of Service 1 page



BEST AVAILABLE COPY



Law Offices of John Chujo & Associates, P.C.  
28535 Orchard Lake Rd.  
Ste. 50  
Farmington Hills, MI 48334



Law Offices of John Chujo & Associates, P.C.  
28535 Orchard Lake Rd.  
Ste. 50  
Farmington Hills, MI 48334

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**CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8**

I hereby certify that the foregoing Response to Notice of Non-Complaint Amendment is being deposited with the United States Postal Service in an envelope as First Class Mail addressed to the Commissioner for Patents and Trademarks, P.O. BOX 1450, Alexandria, VA 22313-1450 on this 25th day of January 2005.

By: 

Alina Tolkach

For:

The Law Offices of John Chupa & Associates, P.C.  
28535 Orchard Lake Rd., Suite 50  
Farmington Hills, MI 48334

The received stamp of the United States Patent and Trademark Office  
imprinted hereon acknowledges the filing of:

**RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT**

Applicant(s): Martin Daniels  
Title: Cutter  
Serial No.: 09/782,353  
Attorney Docket No.: 207-001

Response to Notice: 9 pages  
Certificate of Service 1 page

SEP 16 2005



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,353	02/12/2001	Martin Daniels	287-001	7800

7590

01/10/2005

John G. Chupa  
Law Offices of John G. Chupa & Associates, P.C.  
28535 Orchard Lake Road  
Ste. 50  
Farmington Hills, MI 48334

EXAMINER

ASHLEY, BOYER DOLINGER

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



## UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. Box 147  
ALEXANDRIA, VA 22304-0147  
www.uspto.gov

Paper No

## Notice of Non-Compliant Amendment (37 CFR 1.121)

The amendment document filed on 9-5-04 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121, as amended on June 30, 2003 (see 68 Fed. Reg. 38611, Jun. 30, 2003). In order for the amendment document to be compliant, correction of the following item(s) is required. Only the corrected section of the non-compliant amendment document must be resubmitted (in its entirety), e.g., the entire "Amendments to the claims" section of applicant's amendment document must be re-submitted. 37 CFR 1.121(b).

## THE FOLLOWING CHECKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT

- ☒ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☒ C. Other Specification should be marked-up replacement paragraphs.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☐ B. Other \_\_\_\_\_
- ☐ 3. Amendments to the drawings: \_\_\_\_\_
- ☐ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all claims (including withdrawn claims)
  - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified.
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order
  - ☐ E. Other \_\_\_\_\_

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP Sec. 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opls/prconnotice/office1ver.pdf>.

If the non-compliant amendment is a **PRELIMINARY AMENDMENT**, applicant is given **ONE MONTH** from the mail date of this letter to supply the corrected section which complies with 37 CFR 1.121. Failure to comply with 37 CFR 1.121 will result in non-entry of the preliminary amendment and examination on the merits will commence without consideration of the proposed changes in the preliminary amendment(s). This notice is not an action under 35 U.S.C. 132, and this **ONE MONTH** time limit is not extendable.

If the non-compliant amendment is a reply to a **NON-FINAL OFFICE ACTION** (including a submission for an RCE), and since the amendment appears to be a *bona fide* attempt to be a reply (37 CFR 1.135(c)), applicant is given a **TIME PERIOD** of **ONE MONTH** from the mailing of this notice within which to re-submit the corrected section which complies with 37 CFR 1.121 in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD ARE AVAILABLE UNDER 37 CFR 1.136(a).**

If the amendment is a reply to a **FINAL REJECTION**, this form may be an attachment to an Advisory Action. The period for response to a final rejection continues to run from the date set in the final rejection, and is not affected by the non-compliant status of the amendment.

Deborah Pollard  
Legal Instruments Examiner (LIE)

571-272-4383

Telephone No.

Rev 10/03

## REVISED AMENDMENT PRACTICE HIGHLIGHTS

Technical Support Staff

Requirements of the revised amendment practice of the final rule for all amendments filed on or after July 30, 2003 :

1. Each amendment section must begin on a separate sheet
2. A separate "clean" version of a currently amended paragraph or claim is **NO LONGER REQUIRED** (except for a substitute specification – see No. 5 below)
3. If the amendment adds, changes, or deletes any claim, a listing of all claims that are, or were, in the application, must be provided as follows:
  - The claims must be listed in ascending numerical order
  - The text of all pending claims including withdrawn claims must be presented; no text for "canceled" or "not entered" claims
  - A status identifier must be presented in parentheses after the claim number for each claim; only the following identifiers are permitted: (original), (currently amended), (canceled), (withdrawn), (new), (previously presented), and (not entered)
  - All "currently amended" claims must have markings to show changes; the only markings permitted are underlining for added matter, strikethrough and double brackets [[ ]] (for five or fewer characters) for deleted matter
  - Grouping of consecutive "canceled" or "not entered" claims permitted (e.g., claims 2-8 (canceled))
4. Upon receipt of a complete listing of all claims, LIEs should cancel all previous versions of claims in the application by drawing a line through the previous versions of claims
5. Amendments to the specification by marked-up replacement paragraphs or sections only - no clean replacement paragraph or section is required; **NO** replacement sheets permitted
  - Note, however, that for substitute specifications, rule 1.125 continues to require both a clean and marked-up copy
6. Drawing changes without markings - clean replacement drawing sheets only – annotated sheet(s) showing changes may be submitted

- Explanation separately provided



## UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

Paper No. 11

JOHN G. CHUPA  
28535 ORCHARD LAKE RD., STE 50  
FARMINGTON, HILLS, MI 48334

**COPY MAILED****SEP 17 2004****OFFICE OF PETITIONS  
ON PETITION**

In re Application of  
Martin Daniels  
Application No. 09/782,353  
Filed: February 12, 2001  
Attorney Docket No. 207-001


This is a decision on the petition under 37 CFR 1.137(b), filed September 3, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed November 27, 2002, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on February 28, 2003.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (703) 306-5684.

The application is being forwarded to Technology Center AU 3724 for further processing.

  
Irvin Dingle  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

The received stamp of the United States Patent and Trademark Office  
imprinted hereon acknowledges the filing of:

**PETITION FOR REVIVAL OF PATENT ABANDONED UNINTENTIONALLY  
UNDER 37 CFR 1.17(b) AND RESPONSE TO OFFICE ACTION**

Applicant(s): **Martin Mathew Davids**  
Title: **"Cutter"**  
Attorney Docket No.: **207-001**  
Transmittal Letter: **1 page**  
Petition for Revival: **2 pages**  
Notice of Abandonment: **2 pages**  
Response to Office Action: **5 pages**  
Affidavit: **2 pages**  
Certificate of Mailing: **1 page**  
Check No. 7147 in the amount of \$665.00



Practitioner's Docket No: 207-001

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents and Trademarks  
P.O. Box 1450  
Alexandria, VA 22313-1450

EV254792569US

TRANSMITTAL LETTER FOR PETITION TO REVIVE PATENT UNINTENTIONALLY  
ABANDONED UNDER 37 CFR 1.137(b)

Dear Sir/Madam:

The following documents are submitted in connection with this transmittal letter:

1. Petition to revive patent abandoned unintentionally under 37 CFR 1.137(b).
2. Response to Office Action.
3. A check in the amount of \$665.00, made payable to the Commissioner of Patents and Trademarks.
4. A copy of the Notice of Abandonment.

Respectfully submitted:

3rd September 2004

John G. Chupa, Esq.  
Law Offices of John Chupa & Associates, P.C.  
25855 Orchard Lake Rd., Suite 50  
Farmington Hills, MI 48334

## CERTIFICATE OF MAILING

EV 254792569 US  
Express Mail Label Number

3rd September 2004  
Date of Deposit

The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Address" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to the Commissioner for Patents and Trademarks, P.O. Box 1450, Alexandria, VA 22313-1450.

  
Alina Tolkachier



09/16/2005 15:16

SEP 16 2005

NO. 087 026

PTO/SB/84 (11-03)  
Approved for use through 07/31/2005. OMB 0851-0051

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

**Docket Number (Optional)**  
207-001

First named inventor: Martin Daniels

Application No.: 08/782,353

Art Unit: 3724

Filed: 02/12/2001

Examiner: Ashley, Boyer Dollinger

Title: Cutter

Attention: Office of Petitions  
Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
FAX: (703) 308-8916

**NOTE:** If information or assistance is needed in completing this form, please contact Petitions Information at (703) 308-8282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus an extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

**NOTE:** A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee --required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**

☒ Small entity-fee \$ 665.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ \_\_\_\_\_ (37 CFR 1.17(m))

**2. Reply and/or fee**

**A. The reply and/or fee to the above-noted Office action in the form of \_\_\_\_\_ (Identify type of reply):**

- ☐ has been filed previously on \_\_\_\_\_
- ☒ is enclosed herewith.

**B. The issue fee and publication fee (if required) of \$ \_\_\_\_\_**

- ☐ has been paid previously on \_\_\_\_\_
- ☐ is enclosed herewith.

(Page 1 of 2)

This collection of information is required by 37 CFR 1.137. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 38 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-0199 and select option 2.

PTO/SB/84 (08-03)

Approved for use 07/31/2006. OMB 0581-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## 3. Terminal disclaimer with disclaimer fee

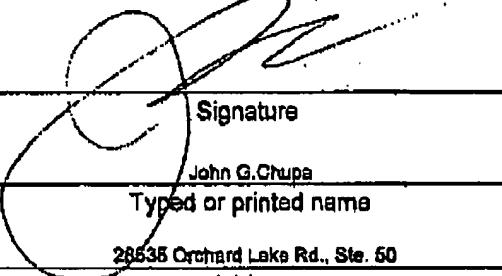
- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/83).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

9.3.04  
Date

Telephone  
Number: 248-324-7787

  
Signature

John G. Chupa  
Typed or printed name

28535 Orchard Lake Rd., Ste. 50  
Address

Farmington Hills, Michigan 48334  
Address

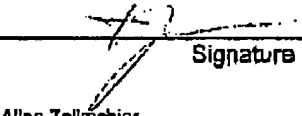
- Enclosures: ☒ Fee Payment
- ☐ Reply
- ☐ Terminal Disclaimer Form
- ☐ Additional sheets containing statements establishing unintentional delay
- ☐ Other: \_\_\_\_\_

## CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

- ☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
- ☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

9.3.04  
Date

  
Signature

Alina Tolkschier  
Type or printed name of person signing certificate

(Page 2 of 2)

09/16/2005 15:16

NO. 087 028

7147

LAW OFFICES OF JOHN CHUPA & ASSOC.  
28535 ORCHARD LAKE RD. STE 50  
FARMINGTON HILLS, MI 48334

Franklin  
Bank, N.A.  
Bank of America  
74-7183/2724

8/31/2004

PAY TO THE ORDER OF Commissioner of Patents and Trademarks

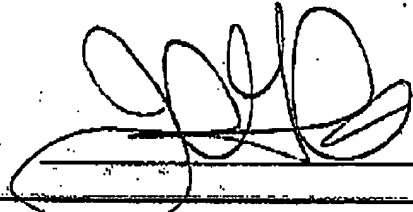
\$665.00

Six Hundred Sixty-Five and 00/100\*\*\*\*\*

DOLLARS

Commissioner of Patents and Trademarks  
Mail Stop  
P.O. Box 1450  
Alexandria, VA 22313-1450

MEMO: Petition to Revive (207-001)



⑈007147⑈ ⑆272471836⑆ 880000008⑆

LAW OFFICES OF JOHN CHUPA & ASSOC.

Commissioner of Patents and Trademarks

Petition to Revive (207-001)

8/31/2004

7147

665.00

FranklinBank-Checking N Petition to Revive (207-001)

665.00

LAW OFFICES OF JOHN CHUPA & ASSOC.

Commissioner of Patents and Trademarks

Petition to Revive (207-001)

8/31/2004

7147

665.00

FranklinBank-Checking N Petition to Revive (207-001)

665.00

MODEL TO REORDER 1 800 862-2221

MLT103-1

04/03/2004/4801

0011/02/02/10



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
 P.O. Box 1459  
 Alexandria, Virginia 22313-1459  
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,353	02/12/2001	Martin Daniels	207-001	7800

7500

05/30/2003

John G. Chupa  
 Chupa & Alberti, P.C.  
 Suite 205  
 31313 Northwestern Highway  
 Farmington Hills, MI 48334

EXAMINER

ASHLEY, BOYER DOLINGER

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 05/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

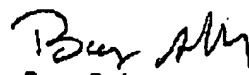
<b>Notice of Abandonment</b>	Application No.	Applicant(s)	
	09/782,353	DANIELS, MARTIN	
	Examiner	Art Unit	
	Boyer D. Ashley	3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 27 November 2002.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

A telephone call to John G. Chupa office confirmed that the instant application is indeed abandoned.

  
Boyer D. Ashley  
Primary Examiner  
Art Unit: 3724

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

U.S. Patent and Trademark Office

PTO-1432 (Rev. 04-01)

Notice of Abandonment

Part of Paper No. 7

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SEP 16 2005

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Martin Daniels  
Serial Number: 09/782,353  
Filed: 02/12/2001  
For: Cutter

Examiner: Ashley, Boyer Dolinger  
Group Art Unit: 3724

Box Fee  
Commissioner for Patents  
P.O. BOX 1450  
Alexandria, VA 22313-1450

**RESPONSE TO OFFICE ACTION**

In response to the Office Action of November 27, 2002, Applicant, through his undersigned attorney, responds as follows:

**In The Claims:**

Claim 1, Line 1, please delete the word "second" and insert the words "metal stud" before the word "cutter".

Claim 1, Line 3, please delete the word "second".

Claim 2, Line 2, please insert the word "member" after the word "handle".

Claim 6, Line 1, please delete the word "comprised" and insert the word "comprising" therefore.

Claim 12, Line 1, please delete the words "relatively projecting" and "relatively thick".

Claim 12, Line 10, please insert the words "said handle

being" before the word "effective".

REMARKS

The Applicant's undersigned Attorney thanks the Examiner for a kind and thorough review of the Application.

Applicant has appropriately amended the claims to address the Examiner's informality rejections.

None of the art of record teaches or discloses a stud cutter, teaches or discloses a cutter having a stud reception member, or even addresses or concerns itself with the problems of cutting studs (see the background section of the pending application). Hence, the cited art is non-analogous art.

Particularly, the term "stud" is defined in The American Heritage Dictionary of The English Language, published by The Houghton Mifflin Company, to mean "an upright post in the framework of a wall for supporting sheets of lath, wall board, or the like". In accordance with this understanding, the specification of the pending application discusses such stud members (e.g., metal stud members) as being used to construct "walls and other portions of buildings and various structures" (see for example, lines 6 - 8 of page 1 of the specification).

Bushaw discloses a cigar cutter which does not have a stud reception member and which could never be used to sever a stud member. Similarly, Mendenhall discloses a paper perforator which does not have a stud reception member and which could never be used to sever a stud member. Maillez discloses a food



slicer which does not have a stud reception member and which could never be used to sever a stud member. Miller also discloses a cigar cutter.

In summary, all of the cited art is non-analogous art and is not properly citable against the pending claims. Query, how could a cigar cutter or a "paper hole producer" ever been used to cut a stud?

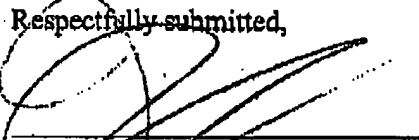
Rather, all of the pending claims relate to a apparatus for cutting a metal stud and there is no teaching or disclosure, anywhere within the cited art of the need or desire to have a tool cut a metal stud or of any of the disadvantages of cutting a stud using current techniques (see, for example, the "Background of the Invention" section of the pending application).

Further, none of the art of record teaches or discloses the use of a stud reception portion which is disclosed to have "a thickness which is substantially similar to the thickness of a stud member" (lines 7 - 8 of page 4 of the pending application). In fact, a stud would not properly fit within any of these devices/apparatus and they are not configured to cut such a stud.

For these reasons, it is respectfully submitted that the pending claims are all allowable over the art of record and such allowance is requested. If the Examiner has any further

questions, the Examiner is invited to call Applicant's undersigned attorney at (248)-324-7787. An affidavit from the inventor is attached which details the non-obvious nature of the inventions and details why the claims are patentably distinct from the prior art of record.

Respectfully submitted,



John G. Chupa (Reg. No. 33,483)  
Law Offices of John Chupa &  
Associates, P.C.  
28535 Orchard Lake Rd., Suite 50  
Farmington Hills, MI 48334  
*Attorney for Applicant*

**CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8**

I hereby certify that the foregoing Response to Notice of Abandonment is being deposited with the United States Postal Service in an envelope as First Class Mail addressed to the Commissioner for Patents and Trademarks, P.O. BOX 1450, Alexandria, VA 22313-1450 on this 3<sup>rd</sup> day of September 2004.

By: 

Alina Tolkachier

For:

The Law Offices of John Chupa & Associates, P.C.  
28535 Orchard Lake Rd., Suite 50  
Farmington Hills, MI 48334

SEP 16 2005



## UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,333	02/12/2001	Martin Daniels	207-001	7800

7990

11/27/2002

John G. Chupa  
Chupa & Alberti, P.C.  
Suite 205  
31313 Northwestern Highway  
Farmington Hills, MI 48334

EXAMINER

ASHLEY, BOYER DOLINGER

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 11/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

5/13/05  
2/15/04

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/782,353	DANIELS, MARTIN <span style="float: right;">CH</span>	
	Examiner	Art Unit	
	Boyer D. Ashley	3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2002.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 12-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-882)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-848)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

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### DETAILED ACTION

1. Applicant's election of Group I, claims 1-8, in Paper No. 5, and cancellation of the non-elected claims 9-11, is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Applicant's addition of claims 12-15 is acknowledged and appear similar enough to claims 1-8 to be included in the following examination. Therefore, claims 1-8 and 12-15 are pending in the instant application.

### *Specification*

2. The abstract of the disclosure is objected to because the reference characters do not match the ones used in the specification, for example, the sign "36" is used for the bushings yet here in the abstract it is used for one of the cutters. Correction is required. See MPEP § 608.01(b).

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-8 and 12-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the use of the term "second" with expressions "a second stud reception member" and "second handle member" is confusing, in that, it implies that there is a first stud reception member and/or a first handle member.

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Art Unit: 3724

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In claim 2, there is no positive antecedent basis for "said handle".

In claim 6, the phrase "... said cutting assembly comprised a serpentine..." is confusing, in that, it is awkwardly worded. It would appear to be better phrased like "... said cutting assembly comprising a serpentine...".

In claim 12, the phrase "... having a first relatively projecting portion and a second relatively thick portion" is confusing, in that, it is not clear as to what the first and second portions are related to. Moreover, it is not clear what "thick" encompasses. The phrase "a pair of substantially identical ... and to said handle, effective to move ..." is confusing, in that, it is awkwardly worded. The phrase following the comma does not serve to further describe the handle but rather the severing members. Better language would be "a pair of substantially identical ... and to said handle, said handle effective to move ...".

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Bushaw, U.S. Patent 1,850,314.

Bushaw discloses the same invention as claimed including: a first support member (upright 4); a workpiece reception member (39/40/41) perpendicularly attached to the first support member (see Figures 1 and 2); a handle member (20) attached to

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Page Number: 3 - Paper Number: 6

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Art Unit: 3724

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the first support member (see Figures 1 and 2) and includes a pair of identical severing members (each cutting edge of star-knife 26 or 26 and 30).

As to claims 2 and 6, the handle of Bushaw is curved and therefore is serpentine shaped.

As to claims 3 and 8, the reception member is a telescoping member (39/41, see Figure 2).

As to claim 4, it should be noted that in apparatus claims the workpiece does not further limit the apparatus of claim 1.

7. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Mendenhall, U.S. Patent 634,304.

Mendenhall discloses the same invention as claimed including: a first support member (A or B'); a workpiece reception member (L) perpendicularly attached to the first support member (directly to A or indirectly to B'); a handle member (G and F) attached to the first support member (directly to B' or indirectly to A) and includes a pair of identical severing members (C).

As to claims 2 and 6, the handle of Bushaw is curved and therefore is serpentine shaped.

As to claims 3 and 8, the reception member is a telescoping member (see Figure 1 where L is adjustable).

As to claim 4, it should be noted that in apparatus claims the workpiece does not further limit the apparatus of claim 1.



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8. Claims 1, and 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Maillez, U.S. Patent 4,625,607.

Maillez discloses the same invention as claimed including: a first support member (7); a workpiece reception member (11) perpendicularly attached to the first support member (see Figures 1 and 2); a handle member (26) attached to the first support member (16) and includes a pair of identical severing members (18).

As to claim 4, it should be noted that in apparatus claims the workpiece does not further limit the apparatus of claim 1.

9. Claims 12 and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Bushaw, U.S. Patent 1,850,314, and Miller, U.S. Patent 396,339.

Bushaw discloses the same invention as claimed including: a workpiece reception portion (39-41) having a certain shape capable of receiving and supporting a metal stud; a support member (1-4,24,31,32) having a first relatively projecting portion (1) and a second relatively thick portion (24,31,4), wherein the reception portion is mounted upon the second portion; a serpentine shaped handle (handle 20 is curved) which is pivotally coupled to the second portion; a pair of substantially identical severing members (each cutting edge of star cutter 26 or 26 and 30, see column 2, line 2, where it states that the cutter 30 is attached as shown in Miller) which are pivotally couple to the second portion and capable of moving from an open position to a closed position upon movement of the handle toward and away from the support member.

As claim 14, the reception portion is orthogonal to the longitudinal axis of the reception portion.

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As to claim 15, the pair severing members having at least two sharp edges as shown in Figure 1.

As to the phrases directed toward the specific workpiece, for example, "... which is similar to said metal stud, effective to receive and support said metal stud", they do not further define the invention as they are directed to a specific workpiece.

10. Claims 12-13 and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Mendenhall, U.S. Patent 634,304.

Mendenhall discloses the same invention as claimed including: a workpiece reception portion (A/J or L) having a certain shape capable of receiving and supporting a metal stud; a support member (A and B' or B') having a first relatively projecting portion (A or B') and a second relatively thick portion (B' or O), wherein the reception portion is mounted upon the second portion; a serpentine shaped handle (F/G) which is pivotally coupled to the second portion; a pair of substantially identical severing members (C) that are pivotally couple to the second portion and capable of moving from an open position to a closed position upon movement of the handle toward and away from the support member.

As to the phrases directed toward the specific workpiece, for example, "... which is similar to said metal stud, effective to receive and support said metal stud", they do not further define the invention as they are directed to a specific workpiece.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Application Number: 09/782,353 - Non Final Rejection  
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Art Unit: 3724

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bushaw, U.S. Patent 1,850,314, and Miller, U.S. Patent 396,339.

Bushaw and Miller Discloses the invention substantially as claimed except for: the pair of feet for supporting the workpiece support; however, the examiner takes official notice that it is old and well known in the art to use feet in conjunction with workpiece supports for the purpose of supporting a workpiece support on a uneven ground or to provide stability during a cutting operation. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use feet with the workpiece support of Bushaw and Miller in order to provide stability to the device during a cutting operation.

### **Conclusion**

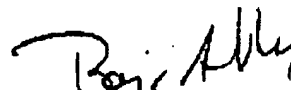
13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Art Unit: 3724

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer Ashley whose telephone number is 703-308-1845. The examiner can normally be reached on Monday thru Thursday between 7:30am and 6:00pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Allan Shoep can be reached on 703-308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.

  
Boyer D. Ashley  
Primary Examiner  
Art Unit 3724

bda  
November 19, 2002

09/16/2005 15:16

SEP 16 2005

NO. 087 048

<b>Notice of References Cited</b>	Application/Control No. 09/782,353	Applicant(s)/Patent Under Reexamination DANIELS, MARTIN	
	Examiner Boyer D. Ashley	Art Unit 3724	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-5,251,524	10-1993	Clifford, Leo D.	83/383
	B	US-4,706,533	11-1987	Giulie, Joe D.	83/599
	C	US-4,625,807	12-1986	Maillez, Paul	83/466.1
	D	US-4,130,037	12-1978	Matthews, Loren A.	83/56
	E	US-3,728,171	04-1973	Strybel, Richard V.	83/843
	F	US-3,393,595	07-1968	Halverson et al.	83/580
	G	US-2,680,241	11-1953	Junkunc	83/801
	H	US-1,850,314	03-1932	Bushaw	83/589
	I	US-1,817,461	02-1927	Scranton	83/157
	J	US-834,304	10-1899	Mendenhall	83/516
	K	US-398,339	01-1889	Miller	83/466.2
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

U.S. Patent and Trademark Office  
PTO-892 (Rev. 01-2001)

Notice of References Cited

Part of Paper No. 8